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**Comptroller General
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**United States Government Accountability Office
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Decision

Matter of: Systems Plus, Inc.

File: B-297215; B-297215.2; B-297215.3; B-297215.4

Date: December 16, 2005

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DIGEST

Protest of agency's evaluation of quotations and selection decision is denied where record shows they were reasonable and consistent with solicitation.

DECISION

Systems Plus, Inc. protests the award of a blanket purchase agreement to Aquilent, Inc. under request for quotations (RFQ) No. DOL059RQ20030, issued by the Department of Labor (DOL) for information technology services. The protester contends that the selection of Aquilent's higher-rated, higher-priced quotation was inconsistent with the evaluation scheme in the solicitation.

We deny the protest.

The RFQ, issued on April 29, 2005, as a small business set-aside, sought quotations from Federal Supply Schedule (FSS) contractors for information technology software development services. The solicitation advised that award could be made to other than the lowest-priced vendor, and that the award would be made to the vendor submitting the quotation determined to be in the best interest of the government. RFQ at 1, 32. The RFQ specifically advised that the agency's determination of which quotation represents the best value to the government was to be based upon consideration of three evaluation factors: technical (with subfactors for understanding, statement of work, performance requirements summary, qualifications, availability of staff, institutional experience, and project

management), past performance, and price; the RFQ did not state that any of the three factors was more important than any other of the factors. Id. at 32. Technical quotations were to demonstrate an understanding of the RFQ's statement of work, objectives, performance measures, and staffing needs. Id. at 33. The evaluation of past performance was to include a review of past performance reference surveys for contracts described in the firms' quotations, as well as any other information available to the contracting officer. Id. For evaluation purposes, vendors were to quote a total price, based on multiplying estimated hours by fixed hourly rates by labor category; the use of service-disabled veteran-owned small businesses would also be considered by the agency in making its "overall best value determination." Id.

Five vendors submitted quotations. Aquilent's quotation was rated highest for technical merit (under both the technical and past performance factors). Specifically, the Aquilent quotation received a rating of "strong" under five of the six subfactors of the technical factor, and a rating of "exceptional" for past performance. Aquilent's quoted price, the second-highest received, was \$17,275,979. The protester's quotation received a rating of "weak" under five of the six subfactors of the technical factor; for past performance, the quotation was rated as "satisfactory." The protester submitted the second-lowest price, \$14,655,430.40.¹ The source selection official considered the strengths of the Aquilent quotation under both the technical and past performance factors and noted that the lower-priced vendors, including Systems Plus, received lower technical and past performance ratings.²

¹ Systems Plus initially protested its evaluation ratings, but the firm failed to respond to the agency's comprehensive report in support of the evaluation. Accordingly, we consider the challenge abandoned. The Big Picture Co., Inc., B-220859.2, Mar. 4, 1986, 86-1 CPD ¶ 218 at 5. Similarly, in its third supplemental protest, the protester challenged its past performance evaluation, but did not respond to the agency's report on this issue; we consider this matter to be abandoned as well. Id. In addition, in its first supplemental protest, Systems Plus argued that the agency had improperly assumed that the firm's employees would be available to a successor contractor and that the agency had improperly interfered with the protester's employment relationships with its employees. In response to the agency's report on these issues, the protester withdrew these allegations.

² The contracting officer's tradeoff analysis initially focused on a comparison of the two quotations with the highest technical and past performance ratings (including Aquilent's), which were similar in price and substantially higher-rated than the other three quotations. Aquilent's quotation, slightly higher-rated and slightly lower-priced than the other of the two technically strong quotations, was then compared to the other lower-priced, lower-rated quotations. The contracting officer found that the third highest-rated quotation, the fourth highest-rated quotation (submitted by Systems Plus), and the lowest-rated quotation (which all quoted prices approximately 15 percent lower than the awardee's price) "were at best weak and
(continued...)"

Weighing the additional value of Aquilent's "very good solution for meeting the needs and objectives of the program," as well as "the higher level of confidence" in the firm's performance at a price in line with the government estimate, the source selection official concluded that selection of Aquilent on the basis of that firm's substantially technically superior quotation warranted payment of an estimated 15-percent price premium associated with it. Award Documentation, Aug. 24, 2005, at 5. This protest followed.³

Systems Plus generally challenges the agency's evaluation of Aquilent's past performance. The protester alleges that, although the agency received two reference surveys rating the firm's past performance as exceptional, the agency should have lowered the rating based on its alleged knowledge of a recent computer system failure at a DOL facility for which Aquilent was responsible, according to Systems Plus. As support for its assertion, Systems Plus points to e-mail correspondence

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would not provide a comfortable level of confidence for good performance in this program, placing success, in the opinion of the evaluators and contracting officer, at risk." Award Documentation, Aug. 24, 2005, at 5.

³ To the extent Systems Plus contends that the RFQ improperly failed to identify the relative weight of the evaluation factors, the matter is untimely as it concerns an apparent impropriety in the solicitation that should have been challenged prior to the closing date. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2005). In any event, as discussed below, Systems Plus in fact acknowledges that all vendors "reasonably should have assumed that the three evaluation factors would be given equal weight by the evaluators." Protester's Third Supplemental Protest Comments, Nov. 14, 2005, at 6. The protest is also untimely to the extent the protester contended for the first time in a supplemental protest filed on October 24 that it interpreted the RFQ to contemplate selection of the technically acceptable, low-priced vendor. The record shows that as early as August 31 the protester was provided an explanation of the selection decision that specifically advised the firm that although the Systems Plus price was lower than the awardee's, the protester's quotation received relatively low technical and past performance ratings, and the agency had determined that Aquilent's quotation represented the best value considering all of the factors for award--technical, past performance, and price. See 4 C.F.R. § 21.2(a)(2) (to be timely, a protest against other than a solicitation impropriety must be filed within 10 days of when the protester knew or should have known its basis of protest). Further, contrary to the protester's contention, this matter does not warrant application of the significant issue exception to our timeliness rules, since it does not concern a novel issue of widespread importance to the procurement community; the adequacy of evaluation terms in FSS procurements is a matter we have previously reviewed. See, e.g., Finlen Complex, Inc., B-288280, Oct. 10, 2001, 2001 CPD ¶ 167; COMARK Fed. Sys., B-278343, B-278343.2, Jan. 20, 1998, 98-1 CPD ¶ 34.

between agency personnel and information technology vendors then servicing the agency. Our review of the e-mail exchange provided by the protester about the system failure, however, indicates that the correspondence fails to identify Aquilent as the cause of the problem. Moreover, the agency points out that both the event and the e-mail exchange referenced by the protester took place after the past performance reference surveys had been submitted and reviewed, and that, in any event, the problem concerned a system overload from an unusually high volume of user activity which could not reasonably be attributed to a single contractor, since there were several vendors servicing the system at the time. The protester has not refuted the agency's rationale for its conclusion that the system failure does not provide any basis to question the awardee's otherwise exceptional past performance. Accordingly, the record provides no basis to question the propriety of the past performance evaluation.

Next, Systems Plus protests that the evaluation of quotations was inconsistent with the RFQ's terms. The protester states that although vendors "reasonably should have assumed that the three evaluation factors would be given equal weight by the evaluators," they were not.⁴ Protester's Third Supplemental Protest Comments, Nov. 14, 2005, at 6. According to Systems Plus, in determining best value, the technical factor was given significantly more weight than the price factor.

In reviewing protests of alleged improper evaluations and source selections, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws. See Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. In a best value procurement where price is only one factor for consideration, price is not necessarily controlling and a price/technical tradeoff may be required to determine if one proposal's (or here, one quotation's) technical superiority is worth the higher price; such a tradeoff must be consistent with the terms of the solicitation's evaluation scheme. See H.F. Henderson Indus., B-275017, Jan. 17, 1997, 97-1 CPD ¶ 27 at 2.

The protester generally argues that the technical factor was given more weight than the price factor. Our review of the record does not support the protester's contention. For instance, the protester argues that, since there is more discussion in the evaluation record and source selection decision dedicated to the technical merit of the quotations, compared to the vendors' prices, the technical factor must have been given more weight. Protester's Third Supplemental Protest Comments, Nov. 14, 2005, at 6. We cannot conclude that the additional documentation under one

⁴As the agency reports, and the protester agrees, where a solicitation fails to indicate the relative importance of price and technical factors, it is reasonable to assume the factors are approximately equal in weight. See Beneco Enters., Inc., B-283154, Oct. 13, 1999, 99-2 CPD ¶ 69 at 9.

evaluation factor means that it was improperly given additional weight. Rather, it is clear that the difference in the degree of discussion in the evaluation and source selection records dedicated to each evaluation factor reflects the number of subfactors and requirements listed in the RFQ for each evaluation criterion. For evaluation under the technical factor, for instance, vendor responses under six subfactors (regarding compliance with a detailed statement of work and objectives) were to be considered; conversely, for price, only hourly rates by labor category, to be multiplied by estimated hours to calculate the total evaluated price, were to be provided. In short, despite the protester's suggestion otherwise, the record shows the additional documentation for the technical factor was reasonably related to the terms of the solicitation itself and does not demonstrate that the agency unreasonably gave additional weight to the technical factor.

As noted above, the RFQ here permitted award to other than the low-priced vendor where that vendor's quotation was found to represent the best value based on consideration of three evaluation factors (technical, past performance, and price). Systems Plus has not challenged the underlying evaluation findings regarding the determination of Aquilent's substantial technical superiority, the reasonableness of that firm's price, or the reasonableness of the source selection authority's decision that specific strengths in the Aquilent quotation, along with its better past performance, warranted the payment of that firm's higher price. Under these circumstances, the agency's decision that the price premium associated with selecting Aquilent's quotation was warranted does not demonstrate that the agency failed to give equal weight to each of the evaluation factors.⁵

The protest is denied.

Anthony H. Gamboa
General Counsel

⁵In its second supplemental protest, Systems Plus asserted that the agency improperly failed to terminate the award to Aquilent after the Small Business Administration (SBA) determined the firm was not a small business. DOL reports that there are intervening vendors in line for award before the protester in the event its protest on this ground were sustained; accordingly, Systems Plus is not an interested party to pursue the protest. See 4 C.F.R. § 21.0(a); Medical Info. Servs., B-287824, July 10, 2001, 2001 CPD ¶ 122 at 5-6; Childers Constr., Co., B-243379.2, 91-2 CPD ¶ 300 at 2-3.